

**REPORT - PLANNING COMMISSION MEETING**  
**May 27, 2004**

**Project Name and Number:** Goney Sandhu Residence (PLN2004-00235)

**Applicant:** Dr. Goney Sandhu, M.D.

**Proposal:** To consider a Conditional Use Permit for the development and use of a new 16,214 square foot residence.

**Recommended Action:** Provide the applicant and staff with direction

<Or>

Approve, based on the Findings for Approval, subject to conditions.

**Location:** East King Avenue, Niles Planning Area

**Assessor Parcel Number(s):** 507-0124-027-00 and 507-0124-028-00

**Area:** 80 Acres or 3,484,800 square feet

**Owner:** Dr. Goney Sandhu, M.D.

**Agent of Applicant:** Paul Kozachenko, Attorney, Gonsalves & Kozachenko, Attorneys at Law

**Consultant(s):** Bruno Marcelic, Architect, Bruno Marcelic Architect  
Velimir Sulic, Civil Engineer, Mason-Sulic Civil & Design Consultants, Inc.  
David W. Buckley, Geotechnical Engineer, Buckley Engineering Associates  
Gerald W. Sasse, Environmental Assessor, Aqua Science Engineers, Inc.  
Bob Petit, Photogrammetry, Aero-Geodetic Corporation

**Environmental Review:** A Mitigated Negative Declaration has been prepared for this project.

**Existing General Plan:** Hill Face Open Space

**Existing Zoning:** O-S (R), [Hill Face] Open Space (Development Reserve Overlay)

**Existing Land Use:** Undeveloped

**Public Hearing Notice:** A total of 37 notices were mailed to owners and occupants of property within 300 feet of the site on the following streets: Alvarado Niles Road (Union City), King Court, Meridian Circle (Union City). The notices to owners and occupants were mailed on May 17, 2004. A Public Hearing Notice was delivered to The Argus on May 10, 2004 to be published by May 17, 2004. A courtesy notice was also sent to the proponents of Measure T.

**Executive Summary:** The Planning Commission is being asked to consider approval of a Conditional Use Permit to allow for the development and use of a new residence on a lot located on East King Avenue within the Niles Hill Area. The Conditional Use Permit would allow the applicant to develop a 16,214 square foot residence with an attached garage and indoor pool, and, in conjunction, delegate to the City Engineer the authority to approve the Preliminary Grading Plan, if necessary, to allow grading of approximately 1,900 cubic yards (staff estimate) and the improvement to an existing graveled roadway for access. The development and use of the project is subject to the performance standards of the Hill Initiative of 2002(Measure T). Because relevant provisions of Measure T are subject to interpretation, staff recommends that the Planning Commission either provide direction to staff or approve the project based on the findings and conditions outlined later in the report. This report provides a complete analysis of the project's conformity with the General Plan, Measure T, and Hill Area standards and policies.

**Background and Previous Actions:** On November 3, 2002, the voters adopted a new hill area protection initiative, the Hill Initiative of 2002(Measure T—enclosed). The intent of Measure T was to further the goals of the original Hill Initiative adopted in 1981 (Measure A). Additional development restrictions or performance standards on land use designations within the City’s Hill Area (and on future annexed hill areas), as well as new definitions (e.g., a new definition for the Toe of the Hill), were adopted by Measure T. Fundamentally, the new and previous initiatives are similar: both have the intent of “protecting the hills of Fremont from harmful and unnecessary development, while maintaining existing use of the hills for agriculture, outdoor recreation, **very-low density residential**, and open space” [emphasis added].

A majority of the development performance standards required by Measure T can be found in Sections 8 and 12 of the initiative. Section 8, “Areas of Special Environmental Concerns—Further Safeguards”, calls out restrictions on development in the Hill Area. For instance, whereas under the previous hill initiative of 1981, Measure A, minor encroachments of development on a slope of thirty percent (30%) or more were permitted if certain conditions were met, Section 8 of Measure T now entirely prohibits development on a slope of thirty percent (30%) or more, unless there are no other areas on the site of less than a 30% slope on a particular legal lot in existence prior to the effective date of Measure T. Other examples found in Section 8 include prohibiting development on critical wildlife habitat and wetlands as designated by the Federal government; a 200-foot development setback requirement from riparian corridors; and, the prohibition of development on ridgelines and hilltops. In addition to meeting the restrictions of Section 8, a project must also be designed to be in compliance with Section 12 of Measure T. Section 12, “Visual Safeguards”, requires development to be designed and sited on a parcel, to the extent practicable, in manner so as to “minimize visibility from public places”. Section 12 also provides that appropriate landscaping, preservation of vegetation, screening, and building materials be incorporated in the development to “minimize the visual impact of the development”. Additionally, there are other performance standards not mentioned above, but discussed in detail under “Project Analysis” below.

**Project Description:** The project consists of a Conditional Use Permit (CUP) and the delegation of authority to the City Engineer to approve a Preliminary Grading Plan, if necessary, to allow the construction and use of a new 16,214 square foot residence and associated improvements on an 80-acre vacant lot (described as APNs 507-0124-027-00 and 507-0124-028-00) within the Hill Area on East King Avenue, above Mission Boulevard in the Niles Planning Area. The 16,214 square foot (cumulative) single-family residence project as proposed includes a 1,520 square foot garage, 2,088 square foot unconditioned indoor pool area, 1,072 square foot guest house, 432 square foot main gate house, and a 331 square foot attached covered breezeway. In conjunction with the proposal, approximately 2,300 lineal feet of paving is proposed on an existing graveled roadway to provide access to the proposed building site, as required by the Fire Department.

The lot has a General Plan designation of Hill Face Open Space. The lot is located in the Hill Area on East King Avenue. The vast majority of the 80-acre lot is above the draft Toe of the Hill, as located based on the Measure T definition, including the applicant’s proposed building site. There is a small portion of the lot below the Toe of the Hill, located closer to East King Avenue and overlooking the backyards of homes on King Court. Pursuant to the City’s General Plan, Zoning Ordinance and Measure T, the proposed residence is required to receive discretionary review (Site Plan and Architectural Approval) by the Planning Commission via the CUP process. The purpose of the CUP process is to ensure that the proposed development is consistent with all policies and standards adopted for development in the Hill Area of Fremont.

The architect describes the Sandhu residence as “patterned after the old missions of California”. The project as described by the project architect is designed as a one-story structure where the main house, attached garage (via a covered breezeway), in-law quarters, and main gate are “laid out around a central courtyard much like the old missions were”. The architect further indicates that the design of the house “hugs the hillside in order to minimize grading”. The structure is described by the architect as being located behind a knoll, where the knoll hides the house from public view, and that the design elements consistently reflect the mission style. The roofing material consists of a clay barrel tile, described by the project architect as “rustic in texture and a blend of muted green and brown so that it compliments the brown hills in the summer and green hills in the winter”. The windows consist of Anderson vinyl clad wood in a “Terratone” color, with faux stone window surrounds. The profile of the structure’s roof has a long overhang with exposed timber rafters. The walls have a stone pattern which the project architect describes “is a mixture of dull beige, green and gray to reflect the different seasons in the hills”. Additional elements, such as wood trellises with pre-cast concrete columns and courtyard fountains are proposed.

Based on the plans presented, the applicant proposes a residence at the northeast section of the lot near a knoll at the approximate elevation of 360 to 380 feet. The main portion of the house as measured from the existing natural grade is approximately 25 feet in height, with the west and east wings of the house (or left and right side of the house as viewed from Mission Boulevard) at approximately 20 to 21 feet in height, respectively. The main floor of the residence is proposed at one level, 45 to 75 feet behind the crest of the knoll, where the terrain is relatively flat, with the west and east wings stepping down into the saddle between two knolls. The highest structure proposed is the main gatehouse at 29 feet in height to provide proper height clearance for a fire engine in the case of an emergency. The gatehouse is located in an area at a lowest elevation (360 feet) within the saddle. Data provided by the applicant indicates that approximately 21,897 square feet of impervious surface area will result from the development of the main residence and approximately 41,919 square feet of impervious surface area will result from the required 20-foot paved all weather access driveway and turnaround required by the Fire Department. Cumulatively, the amount of impervious surface area is 1.83% of the 80-acre lot. Additionally three, 10,000-gallon water tanks eight feet in height behind an upper knoll at the elevation of 410 feet are proposed to supplement water pressure and provide for fire suppression and irrigation for landscaping.

## **PROJECT ANALYSIS:**

**General Plan Conformance:** The subject parcel is located within a Hill Face Open Space land use designation. Staff acknowledges that the proponents of Measure T have indicated that, with the adoption of Measure T, the General Plan designations of the "Hill Face Open Space" and "Hill Open Space" collapsed into a new land use designation of "Hill Area". Although staff understands that collectively the Hill Face Open Space and Hill Open Space land use designations make up the "Hill Area" as defined by Measure T, Measure T created no such new General Plan land use designation of "Hill Area". Thus, based on Policy LU 6.3 of the General Plan, which reads, "Areas on the Hill Face and the Ridgeline are hereby designated 'Hill Face Open Space'" (left unchanged by Measure T), the subject parcel is land use designated Hill Face Open Space.

It should be noted that Measure T, an ordinance adopted by Initiative, also amended the General Plan. Section 5 of Measure T states, "Section 4 (c), 6 through 16, 19 and the description of the Hill Area in Section 4 (a) of this ordinance [Measure T] are additions to the General Plan. They shall be located in Chapter 3, Land Use, subject to the relocation or further relocation in the Plan, as deemed appropriate by administrators or officials". The following General Plan Goals, Objectives and Policies of the Land Use Chapter are applicable to the proposed project in terms of use and development:

### Policy LU 6.2 (Adopted by 1981 Initiative as amended by 2002 Initiative)

Subject to the prohibitions, restrictions, densities, conditions and requirements imposed by the 2002 Hill Area Initiative the generally compatible uses are...very low density residential...which complies with standards and densities set out in the General Plan text. According to the 2002 initiative, the following uses and their normal and appropriate accessory uses and structures (as well as preemptively authorized by Federal and State law) are permitted in the Hill Area, if they comply with all of the provisions of this [General] plan and with other City prohibitions, restrictions, regulations, conditions and requirements: (a) one single-family residence on each legal parcel, secondary [dwelling] units to the extent required by State law, and dwelling units for persons employed on the parcel, or on a ranch or farm that includes the parcel.

Discussion: The applicant proposes one single-family residence on an 80-acre lot consistent with this policy.

### Policy LU 6.6 (Adopted by 1981 Initiative as amended by 2002 Initiative)

The minimum new parcel size shall be at least twenty (20) acres in the Hill Area within the Fremont city limits on January 1, 2002.

Discussion: The project is located on an existing lot of 3,484,800 square feet or 80 acres in size, consistent with this minimum requirement.

### Policy 6.15 (Adopted by Initiative)

The City shall perform architectural review for any development in the Hill Area in order to insure consistency with the policies of the General Plan. In addition, all development on the Ridgeline and Hill Face shall be subject to discretionary review and must be approved by the Planning Commission, or by the City Council on appeal.

Discussion: The project is before the Planning Commission for Site Plan and Architectural Approval. Under the authority of Measure T, the Planning Commission is charged with evaluating the proposed project for conformity with the General Plan, which has been updated to include the policies adopted by Measure T.

Policy LU 6.18 (Adopted by Initiative)

Consistent with the Hill Area Initiative of 2002, developments shall be designed to be compatible with their natural surroundings. Developments shall be designed to maximize retention of natural topographic features, such as drainage swales, slopes, rock outcroppings, vistas, landmark trees, natural foliage and plant formations...riparian areas and areas of natural beauty. Development shall minimize disturbance of any natural watercourse.

Discussion: It is the opinion of staff that the project has been designed to be compatible with the Hill Area for reasons indicated in the "Architectural Analysis" section of the report. The access road, as analyzed in length under the "Steep Slopes" Section of this report, proposed for improvement (i.e., only limited to paving to provide an all-weather surface road, subject to approval by the Fire Marshal) is on an existing roadway in the Hill Area. According to the applicant, the existing roadway was graded and leveled prior to the incorporation of the City.

Policy LU 6.20 (Adopted by Initiative)

Consistent with the Hill Area Initiative of 2002, hillside development shall conform to the natural grades and not scar the existing terrain and vegetation by excessive grading. Buildings should fit the land, not vice versa.

Discussion: Although the plans submitted by the applicant indicate that only 682 cubic yards of grading will result from the project, staff estimates that approximately 1,900 cubic yards will result from grading for the residence and the garage. The amount of grading is necessary to "sink" the building six (6) feet into the ground to reduce the visual impacts of the project. As such, the increased amount of grading necessary to depress the proposed building into the ground is acceptable based on this objective.

Policy LU 2.22 (Adopted by Initiative)

A variety of building types shall be encouraged in the Hill Planning Area.

Discussion: The style of the proposed residence, a one-story mission style home with faux stone walls, in the Hill Area is unique and interesting. Although the permitted maximum height of a structure under Measure T is 35 feet, Measure T allows the City to adopt stricter standards consistent with the measure's standards, goals and policies. The Zoning Ordinance limits the heights of single-family residential structures to 30. Thus, the project is required to comply with the more restrictive limitation.

Typically, most residences in the Hill Area are two stories in height; however, the proposed single-story home is generally from 20 to 25 feet in height. Only the main entry gatehouse is at 29 feet in height to allow the passage of a Fire Engine. The main entry gatehouse, however, is located on a saddle and completely behind the knoll.

Policy LU 6.23 (Adopted by Initiative)

Consistent with the Hill Area Initiative of 2002...other techniques shall be utilized to reduce the need for earth movement and enable steep hill slopes, wooded areas and areas of special scenic beauty or historic interest to be preserved.

Discussion: Staff believes the house designed as a single-story rather than a two-story, is appropriately designed to reduce the need for earth movement. Typically, a two-story home would require additional grading to maintain desired ceiling heights (by depressing the grade through excavation to lower the home) in order to comply with the visual safeguard provisions of Measure T. Additionally, the utilization of an existing leveled roadway reduces the need for earth movement or grading. At the location of the proposed building site, there are no trees or shrubs. The area only contains Hill Area grasses, which will be retained to the extent practicable.

**Zoning Regulations:** The subject parcel is zoned O-S (R), [Hill Face] Open Space (Development Reserve Overlay). The O-S district conditionally permits a single-family residence in the district, subject to Conditional Use Permit approval by the Planning Commission. The development of the residence as proposed complies with respect to the height (maximum of 30 feet), lot area (minimum 20 acres, under Measure T), front yard setback (minimum 50 feet), side yard setback (minimum 50 feet) and rear yard setback (minimum 50 feet) standards for the zoning district.

**Parking:** The Fremont Municipal Code (FMC) requires a minimum of three, covered parking spaces per single-family dwelling with five or more bedrooms. In satisfying this requirement, the proposed project provides five covered parking spaces. Additionally, the motor courtyard provides at least five additional uncovered parking spaces.

**Open Space:** Approximately 78.5 acres of the 80-acre site will remain open space in its present condition.

A conceptual landscape plan is provided. Indigenous Oak trees and shrubs are proposed at the main entrance. Except for some hardscape improvements to create a walkway on the exterior of the proposed residence (and outside of the courtyard), the plans do not show any other proposed planting material on the exterior of the proposed residence. It is noted that all natural landscaping outside of the proposed residence will remain in its natural condition, and that the only natural vegetation proposed for removal for the residence is 34,254 square feet of hill area grasses. Within the interior of the courtyard, a conceptual planting scheme is proposed, which includes trees, shrubs, groundcover and lawn area. The applicant indicates that, in order to achieve the goal of preserving the existing appearance of the Hill Area surrounding the proposed residence, no landscaping is proposed on the exterior of the residence, except at the main entrance (See analysis of the proposed "Landscaping" in the latter section of the report).

Within the interior courtyard, the amount impervious surface proposed is necessary to provide the Fire Department with a turnaround. Staff recommends that a portion of the paved impervious surface be reduced to the extent feasible or, alternatively, converted to turf cell (in lieu of paving), which will also meets the Fire Department's requirements. This modification should be delegated to Development Organization for review and approval (Condition A-22).

**Waste Management:** This project is subject to the provisions of the California Integrated Waste Management Act of 1989 (AB939), the City's Source Reduction and Recycling Element (1992), the Integrated Waste Management Ordinance (1995), and the Commercial/Industrial Recycling Plan (1997). These documents require that any new project for which a building permit application is submitted to include adequate, accessible, and convenient areas for collecting and loading trash and recyclable materials. Approval of the project will require that, for storage purposes, the garbage and recyclable containers must be located in an appropriate location and fully screened, subject to review and approval by Development Organization staff (Condition A-23).

## **DESIGN ANALYSIS:**

**Site Development:** The site is currently undeveloped, except for a leveled and graveled roadway (also a registered road of the City of Fremont Fire Department and Department of Forestry), which provides access to high voltage transmission lines and a system of roads in the Hill Area, secondary access to the Alameda County water tank to the north, and an existing single-family residence to the east. To the west, southwest and east are single-family residences; and, open space to the north. There are no landmark trees on the site. In addition, except for the grasses commonly found in the Hill Area, no trees or shrubs will be removed as result of the development of the project as proposed. The entire 80-acre subject parcel is located above the Toe of the Hill and in the Hill Area based on the City's draft Toe of the Hill Line Map, except for a very limited area of the parcel adjacent to the homes on King Court and on the eastern property line. This area below the draft Toe of the Hill line measures approximately 60 feet in width, and, although it is below the Toe of the Hill line, it is an infeasible location to develop a single-family residence, as the Hayward Fault traverses the area. The building site as proposed is near the center of 80-acre subject parcel at the approximate elevation of 360 to 380 feet. Three, 10,000-gallon water tanks are proposed at the elevation of 410 feet to provide for water pressure, fire suppression, and landscaping irrigation.

The applicant and his design team worked with staff during the Preliminary Review Procedure (PRP) process, which led to the Conditional Use Permit request before the Planning Commission. Initially, the comments to the applicant's design team focused on the siting of the development project. Staff agreed with the applicant that development of the site with a single-family residence in conformance with Measure T was a challenging task. Throughout the entire PRP process, the applicant was advised that Policy LU 6.16 of the General plan (adopted by Measure T) neither allows development of a building, in whole or in part, on a slope of 30 percent or more, nor does it allow the development of a building on a site that has access over a slope of 30 percent or more. Staff expressed concern that the location of the proposed residence as proposed, located "behind a knoll" as described by the applicant, may be inconsistent with the performance standards of Measure T. The primary concern was the

proposed use of an existing leveled and graveled road proposed for access to the building site. Staff was concerned that the proposed access route to the residence may be inconsistent with Section 8 of Measure T, which states, "No building may be located on a site that has access over a slope of thirty percent or more". In its existing condition the road proposed for access is in fact not at a 30% slope; however, historically the area where the road traverses was naturally at a slope of 30% or more. This provision of Measure T does not differentiate between "natural slope" and "existing slope", and the applicant contends that the limitation does not apply to existing conditions. Thus, in evaluating the applicability of the Hill Initiative and General Plan, as it relates to the development of an existing graveled roadway previously located within naturally constrained land, staff found it appropriate to seek direction from the Planning Commission regarding the interpretation of Measure T:

- (1) Applicant's position that access over existing roads is permitted by Measure T (even if such road was the result of grading an area originally with a natural slope greater than 30%; or
- (2) An alternate interpretation that Measure T does not allow access across slopes which were naturally steeper than 30%.

As a reference to determine "natural slopes", the City uses a 1950's aerial map. (See also discussion of "Steep Slopes" below).

It should also be noted that the applicant was asked to explore two alternative sites on the hill face of the 80-acre lot which alternative sites would not require such significant access over this fire road. Based on the information and photo simulations submitted by the applicant, the applicant indicated that the two alternative building sites would result in a substantial visual impact on the surrounding area (See Applicant's letter and photo simulations). When considering and creating photo simulations for the two alternative sites, the applicant simply relocated the same house design onto the alternative sites. No site-specific design modifications were carried out for the alternative sites. In addition, the applicant indicated that the development of these areas would be on top of spoils, which resulted from the grading necessary to construct the Alameda County water reservoir adjoining the 80-acre subject parcel. The applicant also noted that the construction of a dwelling on these two alternative sites would result in substantial costs, due to the significant pier and grade beam construction required to reach bedrock.

**Architecture:** Staff finds that the single-story proposed residence designed to pattern after that of an old California mission complex is appropriate for the Hill Area. With the use of compatible material and colors, such as the rustic roof tiles with a blend of muted green and brown and walls in a stone pattern with a mixture of dull beige, green and gray, the residence should blend in with the natural backdrop of the grassy Hill Area. To further the "blending" of this home with the hillside, staff suggested, and the applicant incorporated, modifications to the project. The applicant moved the proposed residence well away from the crest of the knoll. The proposed residence now is situated 45 to 75 feet from the crest. Staff also advised the applicant to avoid using contrasting colors and architectural elements inconsistent with the natural appearance of the Hill Area (Condition A-9).

Staff believes the design of the home is acceptable; however staff is concerned with sky light roof elements above the master bedroom facing to the south towards Mission Boulevard. Although the photo simulations and visual analysis prepared for the residence as proposed indicates that it would not be visible from Mission Boulevard, the skylights are of concern because of their potential to create glare caused by the sun, which could be seen as one travels further west out of Fremont. The skylights should be redesigned such that the potential to create glare can be eliminated. A condition is included to reflect this requirement, should the Planning Commission approve the project (Condition A-10). In addition, a condition is also added to require the applicant to continue to work with staff during the Development Organization review process on any minor modification necessary to make the design of the residence further consistent with the Hill Area standards and policies (Condition A-11).

**Hill Initiative of 2002 (Measure T):** As previously noted, because most of the 80-acre site is located above the Toe of the Hill, the project is evaluated for consistency with Measure T's performance standards.

- **Parcel Size:** The initiative establishes a new minimum parcel size of twenty acres for all parcels in the Hill Area within City limits on January 1, 2002. The project is located on an 80-acre parcel.
- **Permitted Use:** A single-family residence is permitted on each legal parcel and secondary units to the extent required by State Law. Based on the General Plan and Zoning Ordinance, the project is subject to the Site Plan and Architectural Approval process by the Planning Commission, or the City Council on appeal.

- **Wetlands and Riparian Corridors:** Measure T does not allow the development of structures within “200 feet from the center of a permanent or intermittent stream bed”. The building site and associated improvements on the 80-acre lot is located at least 1,200 feet from the riparian drainageway located to the south, consistent with Measure T.
- **Critical Wildlife Habitat:** Development of the subject site will not impair any critical habitat, designated by the United States Fish and Wildlife Service for preservation of endangered or threatened plant and animal species. Nevertheless a mitigation measure is included and provided in the “Environmental Analysis” Section of this report.
- **Steep Slopes:** Under Measure T, “no structure or building (e.g., the residence and accessory structures), in whole or in part, may encroach on a slope of thirty percent (30%) or more. No building may be located on a site that has **access over a slope of thirty percent (30%) or more**” [emphasis added].

Consistent with the Hill Area Initiative of 2002, all development shall be designed to minimize disturbance of the natural terrain and vegetation and to minimize visual impact. The proposed access to the building site is via an existing graveled road approximately 2,300 lineal feet in length. Staff had advised the applicant that the proposed access, depending on interpretation and application of this policy and provision of Measure T, may not be consistent with Measure T because it was once (in its undisturbed condition) naturally within land with slopes of 30% or more. The applicant contends that Measure T does not apply to the existing roadway and that the development (i.e., limited to paving) of the roadway to meet the Fire Department standards is also consistent with Measure T, as follows:

- The applicant argues that Sections 8 (c) of Measure T, which has been amended in the General Plan as Policy 6.16 (1), conflicts with Section 12 (b) of Measure T. Section 8 (c) reads, “No building **may** be located on a site that has access over a slope of thirty percent (30%) or more”, while Section 12 (b) reads, “To the extent practicable, structures **shall** be located, including by setbacks from parcel boundaries, on that part of a parcel...that minimizes visibility from public places...” [emphasis added]. It is the applicant’s position that Measure T should be interpreted so that the requirements of Section 12 (b) [Visual Safeguards] prevail over Section 8 (c) [Areas of Special Environmental Concern—Further Safeguards].

The applicant further contends that:

- “Measure T should be interpreted so as to not apply to access over existing roads” in that it “should only forbid the construction of new roads over slopes of 30% and not necessarily forbid additional use of existing roads”.
- The existing road is “technically not itself at a 30% slope, but on a flat bench on the hillside, so that it does not in fact cross a slope in excess of 30% but rather a slope that used to be 30%. Measure T uses the term ‘slope’, rather than the term ‘natural land slope’ as defined in the Municipal Code”.
- The roadway exists and also serves as a registered access road of the City of Fremont Fire Department and Department of Forestry. The additional use of the existing road, which currently is 20 feet in width, to provide access to one single-family residence would not result in scarring of the hillside, as no new access roads are proposed.
- There are several other roadways in the Hill Area that are well-known “access” that cross original (natural land) slope of 30% or more.

Staff has included the letters dated March 31, 2004 and April 9, 2004 from the applicant which set forth the applicant’s arguments and interpretation of Measure T. The applicant also contends that if the preferred building site as proposed is denied, the other two alternative sites that staff advised the applicant to explore would not pass the “visibility test” of Section 12 (c) of Measure T.

In contrast, another interpretation of Measure T could determine that the language of Section 8(c) is a mandatory prohibition on access across slopes which were naturally greater than 30%, while Section 12(b) is permissive due to the "to the extent practicable" language.

Thus, the Planning Commission is faced with the challenging role of statutory interpretation of an initiative. In making its interpretation, the Planning Commission should consider the purpose of Measure T as set forth in the text of the initiative (see Section 1).

Should the Planning Commission find the applicant's interpretation of Measure T is persuasive and approve the project, the following finding is recommended:

The project, as proposed, is in conformance with General Plan Policy 6.16 (1) and Measure T's Section 8 (c) provision because Measure T does not apply to an existing roadway.

- **Ridgelines and hilltops:** The applicant has relocated the residence 45 to 75 feet behind the crest of a knoll and into the saddle between two knolls. Staff believes that the proposed building location minimizes the visual impact of the project where it would not be visible from the main public arterial, Mission Boulevard, consistent with the main intent of Measure T.
- **Development Envelopes:** Measure T requires that all buildings (i.e., any structure having a roof supported by walls or columns) on a parcel "shall be placed within a contiguous 'development envelope' not to exceed two acres." The project as proposed is within a development building envelope of 2 acres, consistent with this requirement.
- **Maximum Areas:** Measure T states, "the maximum floor area for all floors (regardless of composition) in buildings on a parcel may not exceed one percent (1%) of the parcel's area, or 20,000 square feet (maximum permitted), which ever is less, but for any parcel a minimum of 10,000 square feet shall be permitted." The project as proposed is consistent with this restriction in that the 80-acre lot size allows a potential maximum floor area of 20,000 square feet. Cumulatively, the building as proposed totals 16,214 square feet.
- **Visual Safeguards:** Measure T states, "To the extent practicable, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel...that minimizes visibility from public places. In all cases, appropriate landscaping, preservation of vegetation, screening, and building materials shall be required by the City to minimize the visual impact of development. Consistent with that end, alteration of topography by grading, excavating, filling or other development activity shall be minimized. Development shall be subordinate to, and blend with, the natural and open space qualities of the area where located, so as to be as unobtrusive as possible, and not to impair those qualities. To the maximum extent practicable, lighting must be located, designed and shielded so as to confine direct rays to the parcel where the lighting is located". It is the opinion of staff that the location as proposed on the saddle between two knolls is the best site on the 80-acre parcel where a single-family residence can be properly designed to minimize visual impacts. The applicant has submitted a visual analysis and photo simulations, which demonstrates that the proposed residence will not be seen from Mission Boulevard. In addition, based on a site visit and viewing the building site from the western end of King Avenue (adjacent to the Western Pacific Railroad), staff believes that one can only see a slight portion of the rooftop, which would generally blend in with the backdrop of the hill setting. With that said, the building site as proposed is only practicable if the Planning Commission can make the findings recommended to approve the project. In addition, should the proposed access be found in compliance with Measure T, the Planning Commission may require additional modifications to the project to better conform to the Visual Safeguards provision of Measure T. Story poles will be installed during the week of the hearing for viewing by the Planning Commission and public (please see Memo for viewing dates and times), which were not made available for staff viewing at the time of the writing of this report.

If the Planning Commission interprets Measure T to prohibit access across a slope which was naturally steeper than 30%, and the location of the building site has to be moved, the Planning Commission may consider providing the applicant direction for a redesign of the structure to address visual safeguard issues.

- **Easements:** Measure T states, "An easement, conveyed to the City or the City's appropriate designee, shall be required for each parcel with respect to which development is permitted...[such] easement shall bar any further development that would not be permitted under this ordinance [Measure T]." It further states, "The easement shall terminate when the parcel is restored substantially to its pre-development condition, so far as the effects of development are concerned." Measure T requires that an easement (that conveys no possessory interest to the City, nor confers any right to public access) be recorded on the subject site, particularly affecting the constrained areas of the site, to ensure conformity with the adopted performance standards. At such time the parcel is restored to its original condition, such as removal of all structures and grading a site substantially back to its pre-development condition, the easement would be terminated. Should the Planning Commission approve the project, the applicant will be required to comply with this standard (Condition A-24).

**Landscaping:** The conceptual landscape plan needs improvement. If the CUP is approved, staff recommends the planting of additional trees found typically in the Niles Hill Area setting. The trees should further soften the appearance of the proposed residence and make it fit better in with the natural hill area. Staff suggests Coast Live Oaks and Buckeye trees be planted on the south, west and east side of the residence. To ensure advance growth of the trees, the trees should be no less than 24-inch box in size. All other landscaping, particularly within the courtyard will be required to be drought tolerant planting material. However, staff believes that these changes can be worked out during the Development Organization review process and asks the Planning Commission to delegate the review and approval to staff (Condition A-19) if the CUP is approved.

The applicant will also be required to install a minimum 30-foot wide wetband around the building site to provide for fire protection (Condition 25).

**Circulation/Access:** Access to the project site is an existing gravel driveway from the end of East King Avenue. The development of Tract 7083, Mission Gardens, included the extension of East King Avenue, which has been terminated with temporary cul-de-sac bulb. A temporary driveway and existing chain link gate provide for ingress and egress to the applicant's property. The private gravel driveway is part of a small network of gravel roads through the hills. These roads provide access to hill area property owners and also serve as fire access roads.

The private gravel driveway is approximately 2,300 feet long from the temporary cul-de-sac on East King Avenue to the proposed residence. The first 250 feet of the driveway is located within public right-of-way dedicated with the final map for Tract 7083. The applicant has recently maintained the driveway by spreading a new layer of gravel along the length of the driveway.

While the existing driveway slope is less than 30% (both along its length and the cross-slope), the driveway was constructed across natural ground slopes that exceed thirty percent (30%) according to a colored exhibit prepared by the applicant's civil engineer. In accordance with Section 8(c) of Measure T, the Hill Area Initiative of 2002:

No building site, in whole or in part, may be located on a slope of thirty percent (30%) or more. No building may be located on a site that has access over a slope of thirty percent (30%) or more. No greenhouses, in whole or in part, may be located on a slope of fifteen percent (15%) or more. Cultivated agriculture may not be conducted on a slope of thirty percent (30%) or more".

While the gravel driveway crosses natural slopes of thirty percent (30%) or more, the proposed building structures are located on slopes less than thirty percent (30%). For more information regarding consistency with Measure T, please see the analysis entitled "Hill Initiative of 2002 (Measure T) Steep Slopes" above in the staff report.

**Grading & Topography:** The project site is located on an 80-acre hillside lot, which surrounds an existing Alameda County Water District (A.C.W.D.) parcel containing a reservoir. The lot is also bisected by a P.G.&E. parcel containing transmission towers and overhead power lines. The site is moderately steep to steep with ground slopes that vary from less than twenty percent (20%) to greater than thirty percent (30%). Existing ground elevations vary from approximately seventy feet behind the homes on King Court, to approximately 750 feet at the westernmost corner (2,300± feet northeast of the proposed residence).

The proposed residence is located within the middle of the 80-acre lot. The proposed building site is on the southwestern side of a "saddle" feature of the hills. The "saddle" is basically two knolls; the southwestern knoll is larger than the northwestern knoll. The driveway access and circular "fire truck turnaround" are located within the low spot in the "saddle," at an elevation of approximately 364. The main residential building is located on the southwestern knoll at an area with existing ground elevations between 372 feet and 381 feet.

Staff estimates that the grading for the project site is in excess of 1,000 cubic yards and will require approval by the Planning Commission. The grading consists of cutting building pads into the existing ground, grading for the new driveway extension and turnarounds, minor grading and a small landslide repair on the existing driveway, and creating a flat pad for the proposed water storage tanks. The majority of the grading will be excavation for building pads for the main residence and garage. The project civil engineer has estimated grading quantities of 555 cubic yards of cut and 127 cubic yards of fill for areas outside of the building envelope. However a note has been added stating that the remaining 428 cubic yards of "Overcut to be spread on site." This spreading of overcut is defined as fill by the Grading Ordinance.

The quantities provided do not reflect the grading needed to create the proposed building pads. Staff estimates combined grading of at approximately 1,900 cubic yards of cut to create the building pads for the main residence and garage structure. The design team has been informed of the miscalculation. However, the applicant wishes to proceed forward at this time for consideration of the Conditional Use Permit. The design team did indicate to staff that changes to the foundation plan may result in grading quantities of less than 1,000 cubic yards. Nevertheless, because the project will require a grading permit and is anticipated to involve grading in excess of 1,000 cubic yards, a Preliminary Grading Plan (PGP) application, generally subject to review by the Planning Commission, is required prior to issuance of the grading permit. Staff, however, recommends that the Planning Commission delegate this PGP approval authority to the City Engineer. Findings by the City Engineer would have to be substantiated and the standard public notification procedure would be followed. The City Engineer would conduct a public hearing if requested by the applicant or a member of the public. A condition of approval has been included to reflect this requirement (Condition A-12).

The project proposes to "sink" the main residence into the ground up to six feet (6'). The garage pad requires cuts of up to eight feet (8') to accommodate the lower level parking, whereas three feet (3') of fill is required at the upper level access from the motor court. "Sinking" the residence, in conjunction with the proposal to have entries on the west side, requires the installation of retaining walls in order to provide the flat patios shown. Staff estimates the height of these retaining walls to be a maximum of three feet.

A proposed covered walkway between the southeast corner of the main residence and the upper floor of the garage requires fill that exceeds six feet (6'). Cut and fill within the motor court varies between four feet (4') of cut and three feet (3') of fill. The existing ground slope across the motor court (from south to north) is approximately eleven percent (11%) and the proposed slope is five percent (5%). Cut and fill in excess of three feet (3'), outside of the building envelope, is inconsistent with policies for development within the Hill Area.

According to the General Plan land use policy LU 6.20, "The building should fit the land, not vice versa." The project attempts to conform to the existing elevation contours, but there are a few areas that staff believes do not meet the goal of the General Plan or the Development Policy for the Hill Area. The proposal to "sink" the buildings minimizes the height and visibility, which is consistent with the primary goal of Measure T, but aspects of the design create grading that is typically not permitted in the Hill Area. Staff recommends that the applicant and design team work with staff, during the Preliminary Grading Plan application process, to revise the project to better conform to the Hill Area objectives (Condition A-13). Cut and fill outside of the building envelopes should be limited to three feet, four feet in small areas, particularly in the motor court and in the covered walkway between the main residence and the garage. Once all of the grading issues have been resolved and are consistent with the Ordinance, and if the final plan results in grading in the excess of 1,000 cubic yards, the Preliminary Grading Plan then can be considered by the City Engineer, as recommended.

**Urban Runoff Clean Water Program:** The Federal Clean Water Act of 1972 and Water Quality Act (1987) require localities throughout the nation to obtain a National Pollutant Discharge Elimination System permit (NPDES) in order to discharge storm water into public waterways such as creeks, rivers, channels and bays. The applicant will comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board. Based on the Mitigated Negative Declaration, conditions of approval are included in the Conditional Use Permit to reflect this requirement.

**Geologic Hazards:** A portion of the project site is within the Alquist-Priolo Earthquake Fault Hazard Zone, but the proposed building site is outside of this hazard zone. The site has also been identified as an area of potential earthquake-induced landslides on the preliminary Seismic Hazard Zones, Niles Quadrangle map, released by the State Geologist on April 19, 2004. According to the preliminary map the building site is not within the hazard zone, but slopes surrounding the “saddle” are indicated as having landslide potential. A project specific geotechnical investigation may be required prior to issuance of any building or grading permit on the project site.

**ENVIRONMENTAL ANALYSIS:** An Initial Study and Draft Mitigated Negative Declaration have been prepared for this project. The environmental analysis identified concerns regarding potential impacts to aesthetics, air quality, biological resources, cultural resources, geology and soils, hydrology and water quality and noise. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. These mitigation measures have been included as conditions of approval (B1 through B7) for this project. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

A finding is proposed that this project would not have a significant effect on the environment based upon the implementation of the identified mitigation measures. Accordingly, a Draft Mitigated Negative Declaration has been prepared for consideration by the Planning Commission.

The mitigation measures of particular concern are, as follows:

### **Aesthetics**

**Mitigation #1:** *Development of the project site is subject to architectural and site plan review through the Conditional Use Permit Process by the City's Planning Commission and Fremont's Development Organization, and will be reviewed for conformity with Measure T as well as the policies of the General Plan and Council-adopted Hill Area Development Policy. In addition, the project will be reviewed to ensure that the design is compatible with the existing natural condition of the surrounding area, and that it is in compliance with all the applicable Zoning codes and policies.*

*The precise project design shall include methods of screening night lighting and glare, where the lighting is located, designed and shielded so as to confine direct rays to the parcel where it is located. Such lighting must be designed so that light is not directed off the site and the light source is shielded from direct offsite viewing.*

### **Biological Resources**

**Mitigation #3:** *A site investigation is required to be completed, before the issuance of a grading permit, by a qualified wildlife biologist to determine the presence of burrowing owls or any endangered, threatened or rare wildlife habitat. An additional investigation would be required thirty days prior to the commencement of any site grading or clean-up.*

### **Geology and Soils**

**Mitigation #5:** *The project shall incorporate the geotechnical recommendations (the “mitigation measures”) contained in the Geotechnical report (pages 6-12) prepared by Buckley Engineering Associates dated August 6, 2003, except that, where a certain recommended mitigation measure exceeds the limitation of or is inconsistent with the requirements of the Fremont Municipal Code (FMC), particularly relating to Hill Area grading limitations, such mitigation measure will be modified to conform to the FMC and Measure T, based on the recommendations of the Project Geotechnical Engineer and approval by the City Engineer.*

*In addition, the proposed project is subject to the provisions of the Seismic Hazard Mapping Act, which may require a site-specific seismic hazard investigation to be completed by the applicant, approved by the City, and filed with the State Geologist.*

**Response from Agencies and Organizations:** Annexation of the subject parcel is required into the Union Sanitary District and Alameda County Water District systems. The annexation process will be reviewed and approved by Alameda's County Local Agency Formation Commission (LAFCO). Because the process takes six months to a year, and due to the substantial cost of the application, the applicant is seeking all City approvals prior to submittal of an annexation application with LAFCO. A condition of approval is included to reflect the annexation requirement (Condition A-26).

#### **APPLICABLE FEES:**

**Development Impact Fees:** This project will be subject to Citywide Development Impact Fees. These fees include fees for fire protection, capital facilities, park facilities and park dedication in-lieu, and traffic impact. These fees shall be calculated at the fee rates in effect at the time of building permit issuance.

#### **ENCLOSURES:**

Informational:	Exhibit "A"	(Architectural Elevations, Vicinity Map, Site Plan, Floor Plans, Grading and Drainage Plan, Visual Analysis Sections, Conceptual Landscape Plan, Architectural Perspectives)
	Exhibit "B"	(Findings and Conditions of Approval)
	Initial Study, Draft Mitigated Negative Declaration	
	Info "1"	Applicant Justification Letters March 31, 2004 and April 9, 2004
	Info "2"	Applicant's Photo Simulations and Supporting Documents (refer to applicant letter)
	Info "3"	Letter of Design Concept
	Info "4"	Letter of Justification for Grading and Drainage

<b>EXHIBITS:</b>	Exhibit "A"	(Architectural Elevations, Vicinity Map, Site Plan, Floor Plans, Grading and Drainage Plan, Visual Analysis Sections, Conceptual Landscape Plan, Architectural Perspectives)
	Exhibit "B"	(Findings and Conditions of Approval)
	Exhibit "C"	(Color and Material Sample Board)
	Exhibit "D"	(Colored Slope Classification Map)
	Initial Study, Draft Mitigated Negative Declaration	

#### **Recommended Actions:**

1. Hold public hearing.
2. Find the initial study conducted for the project has evaluated the potential impacts that could cause an adverse effect, either individually or cumulatively, on wildlife resources. Therefore, find that there is no evidence the project would have any potential for adverse effect on wildlife resources and recommend the filing of a Certificate of Fee Exemption for the project.
3. Adopt the Draft Mitigated Negative Declaration for the project finding that there is no substantial evidence that the project, as mitigated and conditioned, will have a significant effect on the environment and further finding that this action reflects the independent judgment of the City of Fremont.
4. Approve a Mitigation Monitoring Plan for the project.
5. Find that the proposed project is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's

Land Use Chapter as enumerated within the staff report. The project conforms to the goals and policies as enumerated in the staff report and Findings Exhibit adopted/recommended herewith.

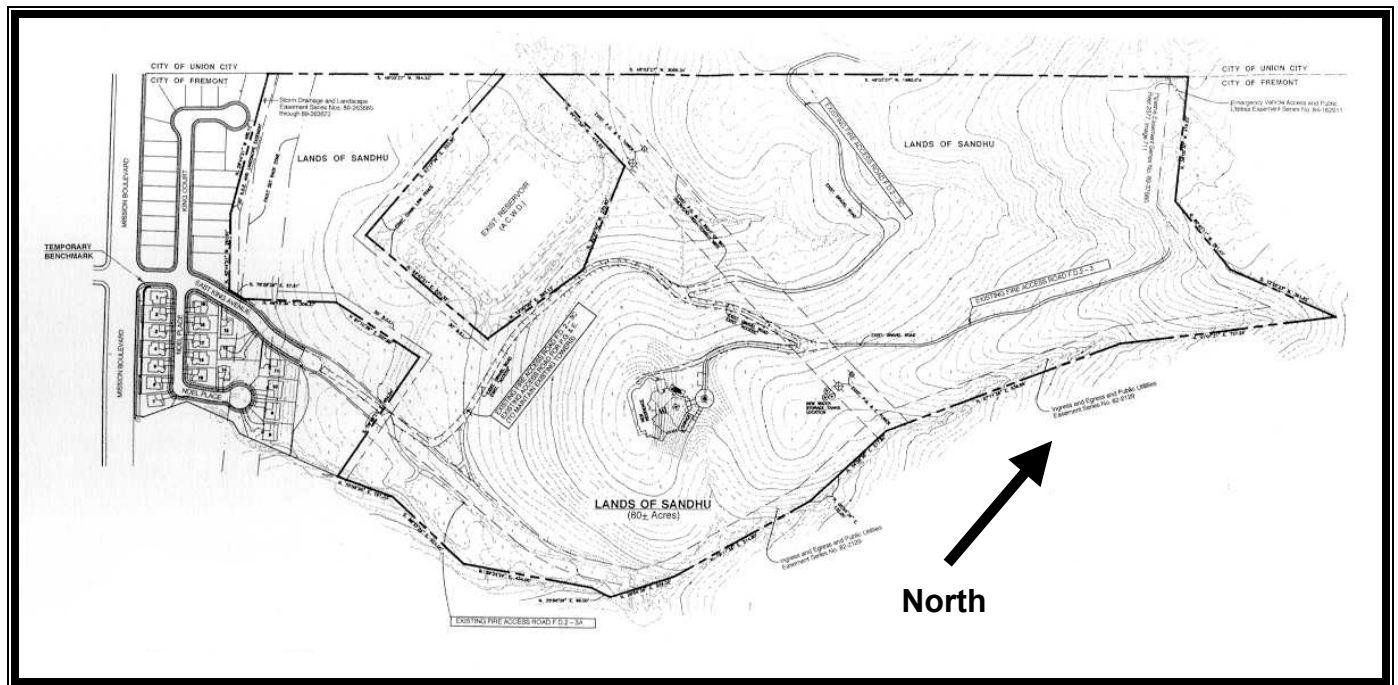
6. Find that the proposed project PLN2004-00235 is in conformance with the performance standards contained in the Hill Initiative of 2002, Measure T for the reasons indicated in this staff report.
7. Delegate to the City Engineer the authority to approve the Preliminary Grading Plan, as conditioned.
8. Approve PLN2004-00235, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

<OR>

1. Hold public hearing.
2. Provide the applicant and staff with direction.

# Site Map

(Site Zoning: O-S (R); Site General Plan: Hill Face Open Space)



**EXHIBIT "B"**  
**Goney Sandhu Residence**  
**East King Avenue (APN 507-0124-027-00 and 507-0124-028-00)**  
**Conditional Use Permit**  
**PLN2004-00235**

**Findings:**

The findings below are made on the basis of information contained in the staff report to the Planning Commission and testimony at the hearing on May 27, 2004, incorporated herein:

- a) The site is suitable and adequate for the proposed project in that it meets the minimum lot area requirement of 20 acres for the development of one single-family residence on a parcel of eighty (80) acres in size. The proposed aggregate floor area of all floors in buildings proposed for the project does not exceed 16,214 square feet. Based on Measure T, the minimum lot size requirement for a development consisting of an aggregate floor area of 16,214 square feet would be 37.22 acres. The applicant's lot size meets this requirement, as well as the maximum aggregate floor area restriction of 20,000 square feet.
- b) The proposed project would not have a substantial adverse effect on traffic circulation, the planned capacity of the street system or other public facilities or services because points of ingress-egress are properly located, sufficient parking is provided, and adequate fire fighting equipment access and facilities are available. Based on the ITE Trip Generation Rate Manual, 7<sup>th</sup> Edition, a single-family home will generate only 10 trips per weekday. The project would have no significant impact on a minor residential street because it amounts to only one additional trip during the AM Peak time from 7 a.m. to 9 a.m. and one additional trip during the PM peak time from 4 p.m. to 6 p.m.
- c) The proposed project would not have a substantial adverse economic effect on nearby uses because the design and appearance of the project on the lot will be required to comply with the performance standards of the Hill Initiative of 2002, Measure T, reducing its visual impact on the surrounding area and in keeping with the natural scenic beauty of the Hill Area. The location as proposed on the saddle between two knolls is the best likely site on the 80-acre parcel where a single-family residence can be properly designed to minimize visual impacts. The applicant has submitted a visual analysis and photo simulations, which demonstrates that the proposed residence will not be seen from Mission Boulevard. In addition, based on a site visit and viewing the building site from the western end of King Avenue (adjacent to the Western Pacific Railroad), staff believes that one can only see a slight portion of the roof top, which would generally blend in with the backdrop of the hill setting and where it will not project into a visual plane of a ridgeline or hilltop.
- d) The proposed project would not have a substantial adverse impact on the general welfare of persons residing in the community because the proposed project on the lot will be required to adhere to all zoning standards and General Plan, as well as all federal, state and local building and fire codes. The applicant will be required to install a thirty-foot wide wetband around the proposed residence to serve as additional fire protection.
- e) The proposed project is compatible with existing and proposed development within its surroundings because, as mentioned above, the proposed use of one single-family residence is permitted on the lot. In addition, the project is properly situated in a location on the lot that is the most likely location which minimizes the visual impact of development. The design of the residence is appropriate because the single-story proposed residence is designed to pattern after the old mission of California, which is an appropriate design for the Hill Area. With the use of compatible material and colors, such as the rustic roof tiles with a blend of muted green and brown and walls in a stone pattern with a mixture of dull beige, green and gray, the residence should blend in with the natural backdrop of the grassy Hill Area.
- f) The proposed project is consistent with Section 8 (c) [Steep Slopes] of Measure T in that the ordinance, as well as General Plan Land Use Policy 6.16, does not apply to an existing roadway created prior to the adoption of the ordinance, and because the improvement of the roadway would not require further grading or cause visual impacts.

- g) The proposed project is consistent with the General Plan and Measure T because the location as proposed on the saddle between two knolls is the best site on the 80-acre parcel where a single-family residence can be properly designed to minimize visual impacts. The applicant has submitted a visual analysis and photo simulations, which demonstrates that the proposed residence will not be seen from Mission Boulevard. It is anticipated that one can only see a slight portion of the rooftop viewing the building site from the western end of King Avenue (adjacent to the Western Pacific Railroad), which would generally blend in with the backdrop of the hill setting.

**Conditions:**

**Prior to building permit issuance**

- A-1. The project shall conform to Exhibit "A", all Hill Area standards and policies, and all the conditions of approval set forth herein.
- A-2. The applicant shall submit appropriate plans to the Development Organization for review to ensure compliance with all City codes and policies. Any changes or modifications required through the Development Organization review process shall be incorporated into the project.
- A-3. The project shall be subject to City-wide Development Impact Fees. These fees may include fees for fire protection, park facilities, park dedication in-lieu fee, capital facilities and traffic impact. The fees shall be calculated at the rate in effect at the time of building permit issuance.
- A-4. Windows, doors, visibility of address and the like shall conform to the Security Ordinance, No. 2007, as amended, subject to the review and approval of staff during the Development Organization review process.
- A-5. Consistent with the Hill Area standards and policies, minor revisions of the site plan, building location and architectural details may be permitted within the overall context of the approved design concept, subject to the approval of the Assistant City Manager during the Development Organization review process.
- A-6. The project shall conform to the City's Hazardous Fire Area requirements as set forth in Chapter 16, Uniform Building Code, as amended.
- A-7. An approved automatic fire extinguisher system (AFES) shall be installed throughout the residence, subject to review and approval of staff during the Development Organization review process.
- A-8. All retaining walls shall be constructed of appropriate reinforced material and designed to match the texture and color of the building. No retaining wall shall exceed three feet in height.
- A-9. The exterior treatment of the residence shall be consistent with Exhibit "C". The use of contrasting colors and architectural elements inconsistent with the natural appearance of the Hill Area shall be prohibited.
- A-10. The skylights shall be redesigned such that the potential to create glare can be eliminated.
- A-11. The applicant shall continue to work with staff during the Development Organization review process on any minor modification necessary to make the design of the residence further consistent with the Hill Area standards and policies.
- A-12. Prior to issuance of a permit for grading in excess of 1,000 cubic yards (cut and fill), the applicant shall apply for and receive approval of a Preliminary Grading Plan (PGP), subject to the review and approval of the City Engineer. Findings by the City Engineer shall be substantiated and the standard public notification procedure shall be followed. The City Engineer shall conduct a public hearing if requested by the applicant or a member of the public. A colored exhibit showing the proposed cut and fill shall also accompany the preliminary grading plan application.

- A-13. The applicant and project design team shall work with staff during the Preliminary Grading Plan application process to revise the project to better conform to the Hill Area objectives. The Preliminary Grading Plan shall not include additional expansion of the width of the fire road. Cut and fill outside of the building envelopes should be limited to three feet, with four feet in small areas.
- A-14. All landscaping shall be properly maintained and shall be designed with efficient irrigation practices to reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides, which can contribute to runoff pollution.
- A-15. The project plans shall identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff. The plans will also include storm water quality measures for operation and maintenance of the project.
- A-16. The developer shall comply with the City's Urban Runoff Clean Water Program in accordance with the NPDES requirements issued by the State's Water Quality Control Board.
- A-17. The project plan shall include erosion control measures to prevent soil, dirt, debris, or other pollutants from entering the storm drain system during and after construction, in accordance with the practices outlined in the Association of Bay Area Governments Erosion and Sediment Control Handbook, California Storm Water Best Management Practice Handbooks, and Regional Water Quality Control Board's Erosion and Sediment Control Field Manual. A separate plan shall be submitted for this purpose and shall be subject to review and approval of the City Engineer during the Development Organization process.
- A-18. The developer is responsible for ensuring that all contractors are aware of all storm water quality measures and that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
- A-19. The applicant shall propose and plant additional trees found typically in the Niles Hill Area setting, unless found inappropriate by the Fire Marshal in the area of the wetband. The trees should further soften the appearance of the proposed residence and make it fit better in with the natural hill area. For example, Coast Live Oaks and Buckeye trees could be planted on the south, west and east side of the residence. To ensure advance growth of the trees, the trees shall be no less than 24-inch box in size. All other landscaping, particularly within the courtyard shall consist of drought tolerant planting material.
- A-20. The applicant/contractor is responsible for ensuring that all contractors are aware of all storm water quality measures and that such measures are implemented. Failure to comply with the approved construction Best Management Practices will result in the issuance of correction notices, citations, or stop orders.
- A-21. The applicant shall submit a detailed soils report including recommendations regarding drainage structures and the existing sub drain, prepared by a qualified soils engineer registered by the State of California.
- A-22. A portion of the paved impervious surface shall be reduced to the extent feasible or, alternatively, converted to turf cell (in lieu of paving), consistent with the requirements of the Fire Department.
- A-23. The location of trash/recycling bins shall be appropriately located on the site and screened, subject to the review and approval of Development Organization staff.
- A-24. In accordance the Hill Initiative of 2002, an easement, conveyed to the City or the City's appropriate designee, shall be required for the parcel with respect to which development occurs on the parcel. Such easement shall bar any further development that would not be permitted under the Initiative. The easement is negative only; it shall convey no possessory interest to the City, nor confer any right to public

access. At such time the parcel is restored to its original condition, such as removal of all structures and grading the parcel substantially back to its pre-development condition, the easement would be terminated.

- A-25. A minimum 30-foot wide wetband shall be installed around the residence to serve as fire protection, subject to the review and approval of the Fire Department.
- A-26. Annexation approval by Alameda's County Local Agency Formation Commission (LAFCO) shall be required prior to the issuance of a building permit. Alternatively, the applicant may seek approval of by the Alameda County Health Department of a Septic System and water well from the Alameda County Water District.

**Mitigation Conditions (Prior and During Construction, as required):**

**B-1 Aesthetics**

Mitigation #1: Development of the project site is subject to architectural and site plan review through the Conditional Use Permit Process by the City's Planning Commission and Fremont's Development Organization, and will be reviewed for conformity with Measure T as well as the policies of the General Plan and Council-adopted Hill Area Development Policy. In addition, the project will be reviewed to ensure that the design is compatible with the existing natural condition of the surrounding area, and that it is in compliance with all the applicable Zoning codes and policies.

The precise project design shall include methods of screening night lighting and glare, where the lighting is located, designed and shielded so as to confine direct rays to the parcel where it is located. Such lighting must be designed so that light is not directed off the site and the light source is shielded from direct offsite viewing.

**B-2 Air Quality**

Mitigation #2: To mitigate the identified air quality impacts of grading and construction, the following mitigation measures will be incorporated into the project:

Comply with the dust suppression measures set forth in the soil remediation plan approved by the County;

Dust generated on the project site shall be controlled by watering all exposed areas at least twice daily during excavation, and especially during clearing and grading operations. Additional watering on windy or hot days is required to reduce dust emissions;

Cover stockpiles of sand, soil and similar materials with a tarp. Cover trucks hauling dirt or debris to avoid spillage;

Paving shall be completed as soon as is practicable to reduce the time that bare surfaces and soils are exposed. In areas where construction is delayed for an extended period of time, the ground shall be revegetated to minimize the generation of dust;

Designate a person to oversee the implementation of the dust control program; and,

During construction, streets adjacent to the project site that are used by construction vehicles shall be swept periodically to reduce dust.

**B-3 Biological Resources**

Mitigation #3: A site investigation is required to be completed, before the issuance of a grading permit, by a qualified wildlife biologist to determine the presence of burrowing owls or any endangered, threatened or rare wildlife habitat. An additional investigation would be required thirty days prior to the commencement of any site grading or clean-up.

B-4 Cultural Resources

Mitigation #4: Should any human remains or historical or unique archaeological resources be discovered during site development work, the provisions of CEQA Guidelines, Section 15064.5. (e) and (f) will be followed to reduce impacts to a non-significant level.

B-5 Geology and Soils

Mitigation #5: The project shall incorporate the geotechnical recommendations (the "mitigation measures") contained in the Geotechnical report (pages 6-12) prepared by Buckley Engineering Associates dated August 6, 2003, except that, where a certain recommended mitigation measure exceeds the limitation of or is inconsistent with the requirements of the Fremont Municipal Code (FMC), particularly relating to Hill Area grading limitations, such mitigation measure will be modified to conform to the FMC and Measure T, based on the recommendations of the Project Geotechnical Engineer and approval by the City Engineer.

In addition, the proposed project is subject to the provisions of the Seismic Hazard Mapping Act, which may require a site-specific seismic hazard investigation to be completed by the applicant, approved by the City, and filed with the State Geologist.

B-6 Hydrology and Water Quality

Mitigation #6: Best Management Practices elements shall be incorporated into the site design to mitigate storm water, drainage, and water quality impacts for the project site.

The project plan shall include erosion control measures to prevent soil, dirt, debris, or other pollutants from entering the storm drain system and natural watercourses during and after construction. A separate plan shall be submitted for this purpose and shall be subject to review and approval of the City Engineer during the Development Organization process. Project construction will be required to adhere to appropriate standards for the construction of a single-family residence, emphasizing storm water Best Management Practices intended to achieve compliance with the goals of the Alameda County Urban Storm Water Runoff Program in conformance with the Federal National Pollutant Discharge Elimination System (NPDES) program established by the Clean Water Act.

B-7 Noise

Mitigation #7: Noise generated during construction activity is considered a short-term impact. To minimize the impacts, construction activities shall be limited to the following hours of operation:

7 a.m. to 7 p.m. Monday through Friday  
9 a.m. to 6 p.m. Saturday  
No Construction Activities on Sunday

**Prior to forming and framing:**

C-1 A field inspection shall be conducted by the Planning Division to ensure that the finished pad and floor elevations are consistent with this approval.

- C-2 The project architect/ engineer shall submit a letter to the City certifying that the finished pad and floor elevations are consistent with the approved plans, subject to the review and approval of the Planning Director.

**During Construction:**

- D-1 Prior to installation of the faux stone treated walls, the applicant or the applicant's representative, shall request an inspection of the residence by the project planner in order to ensure compliance with all of the architectural detailing of the building as specified in the approved drawings.
- D-2 The property owner shall be responsible for litter control and sweeping of all paved surfaces. All on-site storm drains shall be cleaned immediately before the start of the rainy season beginning on October 15 each year, subject to the review of the Building/ Public Works Inspector.

**Prior to release of building for occupancy:**

- E-1 The Project Architect and Landscape Architect (or designer) shall submit a letter to the City certifying the building and its associated landscaping have been constructed in conformance with the approved architectural plan and landscape plans, subject to the review and approval of the Development Organization.

NOTE TO APPLICANT: The project site is located in an area identified as having the potential for earthquake-induced landslides by the State Geologist, on the preliminary State of California Seismic Hazard Zones, Niles Quadrangle map. The permitting and development of the project site shall conform to the requirements of the Seismic Hazard Mapping Act, local ordinances, and policies. Preparation of a site-specific geotechnical investigation to identify the hazard and formulate mitigation measures may be required prior to issuance of any building or grading permit.